

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.7867 OF 2004

Smt. Banubai Valimohammed Shaikh and another		Petitioners
Vs.		
Najamuddin Badrauddin Jalal and others		Respondents

Shri A.B. Tajane for the Petitioners.

Shri Niyaz Ahmad for the Respondent
Nos.3 to 5.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 12, 2004

P.C:

1. Heard. The petitioners challenge the concurrent findings arrived at by the Courts below on the point of carrying out of permanent construction and in the process encroachment over the land belonging to the respondents/landlord by the petitioners. It was the case of the respondents that the petitioners were granted lease of an area of 10 x 10 feet out of the municipal city survey Nos.1314 to 1317, situated at Kalyan on a monthly rent of Rs.9. It was their further case that the petitioners, without the written consent of the respondents, demolished the temporary structure in the said area and constructed a new permanent structure and in the process encroached upon further

area totally occupying an area of 16 x 20 ft. and that was the situation even during the time when the land belonged to the erstwhile owner. Both the Courts below relying upon the documents in evidence, including the rent receipts which apparently disclose the area of lease to be 10 x 10 ft. in favour of the petitioners, have decreed the suit for eviction on the ground of carrying out permanent construction and encroachment as established by the respondents. The Commissioner's report on record also confirms that the petitioners had carried out a new construction in the area, though it was sought to be contended by the petitioners that the petitioners have merely carried out repairs to the existing structure. Apparently therefore, the evidence on record clearly establish the case put forth by the respondents whereas it is the contention of the petitioners that right from the beginning they are in occupation of the area of 16 x 20 ft., which has not been substantiated by any evidence on record apart from the mere claim in that regard. The said findings by both the Courts are findings of fact which have been arrived at on analysis of the evidence on record in proper perspective and do not warrant any interference in writ jurisdiction under Article 227 of the Constitution of India. Hence the petition is liable to be rejected and is accordingly hereby rejected.

On oral request by the learned Advocate for the petitioners, time to vacate the suit premises is extended till 28-2-2005, subject to submitting undertaking by the petitioners and every major member of the petitioners' family as well as those occupying the premises, to be filed before the Registrar (Judl.) of this Court within three weeks from today assuring that the petitioners shall handover the vacant and peaceful possession of the suit premises to the respondents/landlord on or before 28-2-2005 and shall not induct any third person nor shall create any third party interest in the suit premises.
